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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Sensa Products (assignment for the  
benefit of creditors), LLC, a California  
Limited Liability Company, as  
assignee of Sensa Products, LLC, a  
Delaware Limited Liability Company,

Plaintiff,

v.

Alan Hirsch, an individual, and DOES  
1-20 inclusive,

Defendants.

Case No. 2:15-cv-07117-GHK

**DEFENDANT ALAN HIRSCH'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO COMPLAINT FOR:  
(1) BREACH OF CONTRACT (2)  
RESTITUTION (3) FRAUDULENT  
CONVEYANCE (ACTUAL FRAUD)  
(4) FRAUDULENT CONVEYANCE  
(CONSTRUCTIVE FRAUD) (5)  
PREFERENTIAL TRANSFER AND  
COUNTERCLAIM**

Hon. George H. King

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION:**

Defendant Alan Hirsch (the “Defendant”) hereby responds to the *Complaint For: (1) Breach Of Contract (2) Restitution (3) Fraudulent Conveyance (Actual Fraud) (4) Fraudulent Conveyance (Constructive Fraud) (5) Preferential Transfer* (the “Complaint”) filed by Sensa Products (assignment for the benefit of creditors), LLC, a California Limited Liability Company, as assignee of Sensa Products, LLC, a Delaware Limited Liability Company (the “Plaintiff”) and submits his Affirmative Defenses to the Complaint:<sup>1</sup>

1. The Defendant lacks sufficient knowledge or information to enable him to form a belief about the truth of the allegations in paragraph 1 of the Complaint and on that basis denies each of the allegations set forth therein.

2. The Defendant lacks sufficient knowledge or information to enable him to form a belief about the truth of the allegations in paragraph 2 of the Complaint and on that basis denies each of the allegations set forth therein.

3. The Defendant lacks sufficient knowledge or information to enable him to form a belief about the truth of the allegations in paragraph 3 of the Complaint and on that basis denies each of the allegations set forth therein.

4. The Defendant lacks sufficient knowledge or information to enable him to form a belief about the truth of the allegations in paragraph 4 of the Complaint and on that basis denies each of the allegations set forth therein.

5. The Defendant lacks sufficient knowledge or information to enable him to form a belief about the truth of the allegations in paragraph 5 of the Complaint and on that basis denies each of the allegations set forth therein.

6. The Defendant lacks sufficient knowledge or information to enable him

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<sup>1</sup> The Fifth Cause of Action in the Complaint was dismissed with prejudice by Order of the Court dated March 2, 2016 [Doc. 17]. Therefore, this Answer does not respond to paragraphs 69 through 76 of the Complaint.

1 to form a belief about the truth of the allegations in paragraph 6 of the Complaint  
2 and on that basis denies each of the allegations set forth therein.

3 7. The Defendant admits the allegations in paragraph 7 of the Complaint.

4 8. The Defendant admits only that he is a resident of Riverwoods, Illinois.  
5 The Defendant lacks sufficient knowledge or information to enable him to form a  
6 belief about the truth of the remaining allegations in paragraph 8 of the Complaint  
7 and on that basis denies each of the remaining allegations set forth therein.

8 9. The Defendant lacks sufficient knowledge or information to enable him  
9 to form a belief about the truth of the allegations in paragraph 9 of the Complaint  
10 and on that basis denies each of the allegations set forth therein.

11 10. The Defendant admits only that he consented to the exclusive  
12 jurisdiction of state and federal courts located in Los Angeles County with respect to  
13 legal actions arising out of or related to the Operating Agreement. The Defendant  
14 lacks sufficient knowledge or information to enable him to form a belief about the  
15 truth of the remaining allegations in paragraph 10 of the Complaint and on that basis  
16 denies each of the remaining allegations set forth therein.

17 11. The Defendant admits only that he waived any objection to venue in  
18 state and federal courts located in Los Angeles County with respect to legal actions  
19 arising out of or related to the Operating Agreement. The Defendant lacks  
20 sufficient knowledge or information to enable him to form a belief about the truth of  
21 the remaining allegations in paragraph 11 of the Complaint and on that basis denies  
22 each of the remaining allegations set forth therein.

23 12. The Defendant admits only that he held a 10% membership interest in  
24 Sensa and Intelligent Beauty held a 90% membership interest in Sensa. The  
25 Defendant lacks sufficient knowledge or information to enable him to form a belief  
26 about the truth of the remaining allegations in paragraph 12 of the Complaint and on  
27 that basis denies each of the remaining allegations set forth therein.

28 13. The Defendant admits only that he signed the Operating Agreement

1 and that Exhibit “2” to the Complaint appears to be a copy of the Operating  
2 Agreement and five amendments thereto. The Defendant lacks sufficient  
3 knowledge or information to enable him to form a belief about the truth of the  
4 remaining allegations in paragraph 13 of the Complaint and on that basis denies  
5 each of the remaining allegations set forth therein.

6 14. The Defendant admits only that (a) in exchange for 100 units in Sensa,  
7 Hirsch contributed to Sensa as his initial capital contribution the primary intellectual  
8 property required for Sensa’s business and technology operations, consisting of an  
9 exclusive license to use certain patents owned by the Defendant, and any future  
10 worldwide patents or utility models filed or invented by the Defendant, as set forth  
11 in the License Agreement between the Defendant and Sensa, so that Sensa might  
12 develop, market and sell the Products (as defined in the Operating Agreement), and  
13 (b) the Defendant entered into a Consultant Agreement with Sensa to perform  
14 certain services to ensure that the technology was implemented successfully by  
15 Sensa. The Defendant denies the remaining allegations in paragraph 14 of the  
16 Complaint.

17 15. The Defendant admits only that the original Operating Agreement  
18 provided that “Net Profits shall be allocated as follows: first to IBI until the Note is  
19 repaid in full; and second, to the Members in proportion to their Percentage Interest,  
20 subject to the Advance repayment requirements set forth in Section 6.5 below.” The  
21 Defendant denies the remaining allegations in paragraph 15 of the Complaint.

22 16. The Defendant admits the allegations in paragraph 16 of the Complaint.

23 17. The Defendant denies the allegations in paragraph 17 of the Complaint.

24 18. The Defendant admits only that the fifth amendment to the Operating  
25 Agreement dated as of April 1, 2012 modified section 6.5 of the Operating  
26 Agreement to provide, among other things, that “(a) Beginning on April 1, 2012, the  
27 Company shall make monthly Advance payments to Hirsch in equal payments of  
28 \$150,000 per month. (b) all future distribution payments to Hirsch shall be set off

1 and applied by the Company directly to repayment of outstanding Advances, until  
2 such Advances are paid back to the Company in full by Hirsch. (c)... the Company  
3 shall make, as an Advance payment to Hirsch, the amount equal to Hirsch's Tax  
4 Liability for such time period... [and] (e) In the event that the Company is dissolved  
5 pursuant to Section 9.1(b), Hirsch shall not be required to repay Advances to the  
6 Company." The Defendant denies the remaining allegations in paragraph 18 of the  
7 Complaint.

8         19. The Defendant denies the allegations in the first sentence of paragraph  
9 19 of the Complaint. The Defendant lacks sufficient knowledge or information to  
10 enable him to form a belief about the truth of the remaining allegations in paragraph  
11 19 of the Complaint and on that basis denies each of the remaining allegations set  
12 forth therein.

13         20. The Defendant denies the allegations in the last sentence of paragraph  
14 20 of the Complaint. The Defendant lacks sufficient knowledge or information to  
15 enable him to form a belief about the truth of the remaining allegations in paragraph  
16 20 of the Complaint and on that basis denies each of the remaining allegations set  
17 forth therein.

18         21. The Defendant denies the allegations in the last sentence of paragraph  
19 21 of the Complaint. The Defendant lacks sufficient knowledge or information to  
20 enable him to form a belief about the truth of the remaining allegations in paragraph  
21 21 of the Complaint and on that basis denies each of the remaining allegations set  
22 forth therein.

23         22. The Defendant denies that he received approximately \$94,909 in  
24 Distributions and at least \$3,071,600 in Advances from Sensa in Fiscal Year 2012.  
25 The Defendant lacks sufficient knowledge or information to enable him to form a  
26 belief about the truth of the remaining allegations in paragraph 22 of the Complaint  
27 and on that basis denies each of the remaining allegations set forth therein.

28         23. The Defendant denies the allegations in the last sentence of paragraph

1 23 of the Complaint. The Defendant lacks sufficient knowledge or information to  
2 enable him to form a belief about the truth of the remaining allegations in paragraph  
3 23 of the Complaint and on that basis denies each of the remaining allegations set  
4 forth therein.

5 24. The Defendant admits only that he received \$600,000 from Sensa in  
6 2014. The Defendant lacks sufficient knowledge or information to enable him to  
7 form a belief about the truth of the remaining allegations in paragraph 24 of the  
8 Complaint and on that basis denies each of the remaining allegations set forth  
9 therein.

10 25. The Defendant lacks sufficient knowledge or information to enable him  
11 to form a belief about the truth of the allegations in paragraph 25 of the Complaint  
12 and on that basis denies each of the allegations set forth therein.

13 26. The Defendant lacks sufficient knowledge or information to enable him  
14 to form a belief about the truth of the allegations in paragraph 26 of the Complaint  
15 and on that basis denies each of the allegations set forth therein.

16 27. The Defendant lacks sufficient knowledge or information to enable him  
17 to form a belief about the truth of the allegations in paragraph 27 of the Complaint  
18 and on that basis denies each of the allegations set forth therein.

19 28. The Defendant lacks sufficient knowledge or information to enable him  
20 to form a belief about the truth of the allegations in paragraph 28 of the Complaint  
21 and on that basis denies each of the allegations set forth therein.

22 29. The Defendant denies the allegations in paragraph 29 of the Complaint,  
23 except the Defendant admits that the Hirsch Study was not double blind.

24 30. The Defendant lacks sufficient knowledge or information to enable him  
25 to form a belief about the truth of the allegations in paragraph 30 of the Complaint  
26 and on that basis denies each of the allegations set forth therein.

27 31. The Defendant lacks sufficient knowledge or information to enable him  
28 to form a belief about the truth of the allegations in paragraph 31 of the Complaint



1 and on that basis denies each of the allegations set forth therein.

2       32. The Defendants admits that Exhibit “4” to the Complaint is a copy of  
3 the FTC Settlement, and the Defendant denies any of the allegations in paragraph 32  
4 of the Complaint inconsistent therewith.

5       33. The Defendant repeats and incorporates by reference the foregoing  
6 responses to paragraphs 1 through 32 as if fully set forth herein.

7       34. The Defendant admits the allegations in paragraph 34 of the Complaint.

8       35. The Defendant denies the allegations in paragraph 35 of the Complaint.

9       36. The Defendant lacks sufficient knowledge or information to enable him  
10 to form a belief about the truth of the allegations in paragraph 36 of the Complaint  
11 and on that basis denies each of the allegations set forth therein.

12       37. The Defendant admits only that he signed the Operating Agreement.  
13 The Defendant lacks sufficient knowledge or information to enable him to form a  
14 belief about the truth of the remaining allegations in paragraph 37 of the Complaint  
15 and on that basis denies each of the remaining allegations set forth therein.

16       38. The Defendant admits only that he signed the Operating Agreement, as  
17 amended, governed Sensa’s obligations to the Defendant. The Defendant denies the  
18 remaining allegations in paragraph 38 of the Complaint.

19       39. The Defendant lacks sufficient knowledge or information to enable him  
20 to form a belief about the truth of the allegations in paragraph 39 of the Complaint  
21 and on that basis denies each of the allegations set forth therein.

22       40. The Defendant denies the allegations in paragraph 40 of the Complaint

23       41. The Defendant denies the allegations in paragraph 41 of the Complaint,  
24 except the Defendant admits that he was entitled to certain monthly “Advances”  
25 from Sensa pursuant to section 6.5 of the Operating Agreement.

26       42. The Defendant lacks sufficient knowledge or information to enable him  
27 to form a belief about the truth of the allegations in paragraph 42 of the Complaint  
28 and on that basis denies each of the allegations set forth therein.

1           43.    The Defendant denies the allegations in paragraph 43 of the Complaint.

2           44.    The Defendant denies the allegations in paragraph 44 of the Complaint.

3           45.    The Defendant denies the allegations in paragraph 45 of the Complaint.

4           46.    The Defendant repeats and incorporates by reference the foregoing  
5 responses to paragraphs 1 through 45 as if fully set forth herein.

6           47.    The Defendant denies the allegations in paragraph 47 of the Complaint.

7           48.    The Defendant denies the allegations in paragraph 48 of the Complaint.

8           49.    The Defendant denies the allegations in paragraph 49 of the Complaint.

9           50.    The Defendant denies the allegations in paragraph 50 of the Complaint.

10          51.    The Defendant lacks sufficient knowledge or information to enable him  
11 to form a belief about the truth of the allegations in paragraph 51 of the Complaint  
12 and on that basis denies each of the allegations set forth therein.

13          52.    The Defendant lacks sufficient knowledge or information to enable him  
14 to form a belief about the truth of the allegations in paragraph 52 of the Complaint  
15 and on that basis denies each of the allegations set forth therein.

16          53.    The Defendant denies the allegations in paragraph 53 of the Complaint.

17          54.    The Defendant denies the allegations in paragraph 54 of the Complaint.

18          55.    The Defendant denies the allegations in paragraph 55 of the Complaint.

19          56.    The Defendant repeats and incorporates by reference the foregoing  
20 responses to paragraphs 1 through 55 as if fully set forth herein.

21          57.    The Defendant lacks sufficient knowledge or information to enable him  
22 to form a belief about the truth of the allegations in paragraph 57 of the Complaint  
23 and on that basis denies each of the allegations set forth therein.

24          58.    The Defendant lacks sufficient knowledge or information to enable him  
25 to form a belief about the truth of the allegations in paragraph 58 of the Complaint  
26 and on that basis denies each of the allegations set forth therein.

27          59.    The Defendant admits only that he received payments from Sensa of  
28 approximately \$2.5 million in 2012 and \$2 million in 2013, a substantial portion of



1 which was used to pay income taxes. The Defendant lacks sufficient knowledge or  
2 information to enable him to form a belief about the truth of the remaining  
3 allegations in paragraph 59 of the Complaint and on that basis denies each of the  
4 remaining allegations set forth therein.

5 60. The Defendant lacks sufficient knowledge or information to enable him  
6 to form a belief about the truth of the allegations in paragraph 60 of the Complaint  
7 and on that basis denies each of the allegations set forth therein.

8 61. The Defendant lacks sufficient knowledge or information to enable him  
9 to form a belief about the truth of the allegations in paragraph 61 of the Complaint  
10 and on that basis denies each of the allegations set forth therein.

11 62. The Defendant denies the allegations in paragraph 62 of the Complaint.

12 63. The Defendant denies the allegations in paragraph 63 of the Complaint.

13 64. The Defendant repeats and incorporates by reference the foregoing  
14 responses to paragraphs 1 through 63 as if fully set forth herein.

15 65. The Defendant lacks sufficient knowledge or information to enable him  
16 to form a belief about the truth of the allegations in paragraph 65 of the Complaint  
17 and on that basis denies each of the allegations set forth therein.

18 66. The Defendant lacks sufficient knowledge or information to enable him  
19 to form a belief about the truth of the allegations in paragraph 66 of the Complaint  
20 and on that basis denies each of the allegations set forth therein.

21 67. The Defendant denies the allegations in paragraph 67 of the Complaint.

22 68. The Defendant denies the allegations in paragraph 68 of the Complaint.

23 **FIRST AFFIRMATIVE DEFENSE**

24 The Complaint, and each purported claim therein, fails to state a claim upon  
25 which relief can be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are barred in whole or in part by the applicable statutes of  
28 limitations.

1 **THIRD AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred in whole or part by the doctrine of *in pari delicto*.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 The Defendant was a good faith transferee and provided value for each and  
5 every payment that he received from Sensa.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 The Defendant has a right of setoff against Plaintiff with respect to amounts  
8 due and owing to the Defendant as set forth in the Defendant's Proof of Claim dated  
9 April 15, 2015. This includes approximately \$39,000 for non-reimbursed legal fees  
10 and costs incurred for prosecution and maintenance of licensed intellectual property;  
11 \$1,050,000 for unpaid Advances for the period of April 2014 through October 2014;  
12 and additional, unliquidated amounts based on Sensa's breach of the License  
13 Agreement and failure to return the intellectual property to the Defendant.

14 **DEFENDANT'S PRAYER FOR RELIEF**

15 **WHEREFORE**, Defendant respectfully prays for judgment as follows:

- 16 1. That the Complaint be dismissed with prejudice;  
17 2. That judgment be entered in favor of Defendant on all claims;  
18 3. That Defendant be awarded his costs and attorney's fees; and  
19 4. For such other and further relief as the Court may deem just and proper.

20  
21 Dated: March 23, 2016

SHAW FISHMAN GLANTZ & TOWBIN LLC  
Gordon E. Gouveia

22  
23 -and-

24 LANDAU GOTTFRIED & BERGER LLP  
Michael I. Gottfried  
25 Aleksandra Zimonjic  
26 Roye Zur

27 By: 

28 Attorneys for Defendant Alan Hirsch